



THE OFFICE OF AGRICULTURE

Marc Elrich
County Executive

Jeremy V. Criss
Director

DECISION MEMORANDUM

June 26, 2020

TO: Marc Elrich, County Executive

FROM: Jeremy V. Criss, Director Office of Agriculture

SUBJECT: **Decision Memorandum – Exemption from Subdivisions-Chapter 50 commercial buildings used for agritourism including farm alcohol production and on-site farm markets**

1. **PURPOSE:** Request authorization from the County Executive to pursue Subdivision exemptions for commercial buildings used for agritourism including farm alcohol production and on-site farm markets.
2. **BACKGROUND:** When a property owner wants to expand into agritourism including Farm Alcohol Production or an on-site farm market that may require a commercial building permit-CBP, this triggers other code requirements where each has its own associated fees and costs. A CBP triggers subdivision under Chapter 50. Subdivision triggers Forest Conservation under Chapter 22A. Subdivision triggers (E&S and SWM) Erosion and Sediment Control and Storm Water Management under Chapter 19. Subdivision triggers Fire and Safety under Chapter 22. Subdivision triggers, Road Dedication under Chapter 49. Subdivision triggers Green Building Certification under Chapter 8. Subdivision triggers Development Impact Tax under Chapter 52. The Office of Agriculture has worked with property owners in cases where these associated fees and costs have exceeded \$150,000. In one case - Windridge Winery, the owners have exceeded \$200,000 in surveying, engineering and code compliance costs associated with their commercial building.

There are several reasons commercial buildings used for agritourism, farm alcohol production and on-site farm markets need to be exempted from the subdivision requirements. Agritourism must be a subordinate use to the main use of a property, farming. This type of use is different than a typical commercial type of facility found down-county. Unlike a Panera Bread or Subway, farmers can only charge what the market will allow. Farmers are price takers not price makers. Along with charging a price the market will support, farmers cannot afford to build a down-county type of commercial facility because they will not be able to recoup the costs. Farmers do not have the public water and sewer that down county property owners are afforded. This means farmers must incur additional costs to install wells and septic systems that down county property owners do not. Individual wells are often limited in the capacity of gallons per minute and therefore do not have the ability to accommodate sprinkler systems that commercial buildings require unless the farmer incurs additional expenses for pumps and tanks to support a sprinkler system.

In Chapter 59.3.2.10.B, Farm Alcohol Production-FAP is another example of agritourism that must also be a subordinate use to the main use of a property, farming. Farm alcohol facilities bring many visitors-

customers to the site which requires buildings to accommodate them. In keeping with the rural and agricultural aesthetic of the Agricultural Reserve, farmers desire to construct buildings with materials and designs that are much different than the steel, bricks and mortar buildings we see down county. This environment coupled with the public demand for FAP helps to demonstrate why commercial buildings up county are vastly different than what you see down county.

3. ANALYSIS: The County DPS offers a building code policy for allowing agricultural buildings used for agritourism including farm alcohol production contingent upon the occupancy not exceeding 50 people. The policy mentioned above works well for smaller businesses that want to accommodate smaller number of people and venues involving smaller groups inside agricultural buildings. The policy however does not work well for business owners that want to accommodate larger venues and occupancies above 50 people.

The three examples mentioned in the background section bring many people and residents to the farm. All three of the examples represent types of agritourism businesses/uses that are often closed during the winter months of the year meaning the cash flow associated with the business cannot be applied over twelve months like down county businesses do. All three of the examples require the farmer to construct buildings that will accommodate the visitors-customers. The economic reality of farming and on-farm business is completely different than the economic reality and forces and businesses down county.

4. RECOMMENDATION: The Office of Agriculture recommends that the commercial building code for activities involving agritourism, farm alcohol production and on-site farm markets should not be held to the same standard of commercial buildings that are built down county. Montgomery County is just beginning to see the potential for venues that help residents appreciate the farm experience and to connect with the agricultural community. Removing the requirement for subdivisions involving commercial buildings used for these types of venues with help to expand the County's economy and provide greater opportunities to realize the environmental resources of the rural and agricultural areas of the County.

5. ATTACHMENTS: The OAG has numerous documents that outline the costs associated with the Windridge Winery project that we could provide with permission from the Butz Brothers.

County Attorney / Executive / Chief Administrative Officer Decision:

_____Agree _____Disagree _____Schedule Briefing _____See/Call Me

County Attorney Date: ____ / ____ / ____

____ Agree

____ Disagree

____ Schedule Briefing

____ See/Call Me

County Executive / Chief Administrative Officer

Date: ____ / ____ / ____